

North Smithfield Zoning Board

Meeting Minutes of April 16, 2008

Primrose Fire Station

1470 Providence Pike, North Smithfield, RI

The Chair called the meeting to order at 7:05 pm.

I. Roll call

Present: Chair Vincent Marcantonio, Mario DiNunzio, Bill Juhr, Stephen Kearns, Dean Naylor, Guy Denizard. Absent: Steven Scarpelli. Also present were Attorney Peter Ruggiero and Building and Zoning Official Robert Benoit.

The Chair explained the rules of the Board, including the disclosure of no compensation or pension credits received by the board members.

II. Continuation of appeal of the Planning Board's decision of August 16, 2007. Narragansett Improvement Co., Rankin Path Realty. Location: Douglas Pike, Angela Way, Brookside Drive, Leonard Drive, Rankin Path; Assessor's Plat 14, Lots 17, 19, 20, 29, 31-34, 36, 88, 93, 107, 123, 125, 128, 135, 136, 139, 140, 141, 144, 145, 159, 202, 242.

The Chair announced that the voting members for this appeal will be Mr. DiNunzio, Mr. Kearns, Mr. Juhr, Mr. Naylor, and Mr. Marcantonio. The Chair also wanted to state for the record that there is a typographical error in the transcript from March 31, 2008. Line 5, p.

77 should say "need" instead of "read." The Chair entered the transcripts from March 13, 2008 and March 31, 2008 as part of the official record (exhibit D1). The Chair then reviewed rules/standards of review for the Board of Appeal. When hearing appeals from the Planning Board's decision, the Zoning Board shall not substitute its own judgment for that of the Planning Board, but must consider the issue upon the findings and record of the Planning Board. The Zoning Board shall not reverse a decision except on a finding of prejudicial, procedural error, clear error, or lack of support by the weight of the evidence in the record.

The Chair asked, "What is the pleasure of the Board?" Mr. Kearns commented for the record that throughout the hearing, the attorney for the applicant, Mr. Kelly, showed disdain for proceedings, lack of respect of the town boards (Planning Board and Zoning Board), and the citizens and witnesses involved in the procedure. Mr. Kearns stated that it is his sense that the attorney for the applicant thought judgment of both the Planning Board and Zoning Board was a foregone conclusion. Mr. Kearns stated that the members of the Zoning Board took their role in this procedure very seriously, listened to all evidence, and reviewed the written record to come up with a judgment that was supportable and legally defensible. He would like to be sure that this information is included in the record, so that Superior Court will see the amount of time and effort put in by the Board members, as well as paper used in preparing and hearing this appeal. Mr. Kearns stated that if it is not thought that a quasi-judicial

board can make a defensible decision before the applicant goes before Superior Court, then perhaps the appeal process should be changed. With regard to timing of the process, he commented that the applicant has a right to be heard in a timely manner and feels that it is a legitimate position by the applicant. He also added that with regard to timing of the application, in the testimony that Mr. Kelly and his client were surprised in August of 2007 with news of historical cemeteries, clearly he was misleading the Board, because he had information before that time. Mr. Kearns also added that a Phase I archaeological study is a very specific document, with specific conditions, and much different than what the applicant offered as a compromise in trying to get the original Planning Board hearing extended to October 2007.

Mr. DiNunzio stated that he is comfortable with work done by the Board in hearing this appeal. He stated that careful consideration was given to evidence, exhibits, transcripts, and based upon conditions of appeal, no credible criteria is present to overturn the Planning Board's decision.

Mr. Naylor responded to the applicant's argument that they didn't have time to respond to the Planning Board's request. He stated that the applicant had owned 83% of land in excess of 5 years, so for them to not know what's on the land is very hard to believe. He added that with this process having gone on over 15 months, Mr. Kelly blamed town for dragging its feet; which may be true, but this also gave the

applicant time to gather information and to know what's on the land. From an engineering standpoint, Mr. Naylor stated that the plans imply that water runs uphill, and he would be embarrassed to present those plans before a public board. Mr. Naylor stated that the record shows that throughout the application process, there was never any evolution of the plans or updated plans. He stated that Mr. Kelly wanted a give and take and expected that, but though the Planning Board requested further information, the plans originally submitted were the same as those at the time of decision. Mr. Naylor stated some examples of requests for information from the Planning Board that received no response from the applicant, including Mr. Flaherty's request to consider conservation development practices in December 2006, and a discussion of changing the types of berms to which the Planning Board received no answer. He additionally commented that after four meetings and lengthy correspondence, there was no change in the plans. Mr. Naylor stated that it is the responsibility of applicant to make their case comply with the town's comprehensive plan, but when the ball was in their court, they did not respond. He stated that the problems the Planning Board had with the application came from the same root cause, which was the applicant's inability or lack of wanting to respond to the Planning Board's requests. Mr. Naylor stated he found no prejudicial or procedural error, nor lack of support in the weight of the evidence in record; nothing had changed or evolved throughout the process.

Mr. Juhr stated, "I feel we have deliberated thoroughly over the last

several meetings, have listened intently to both sides, thoroughly reviewed and evaluated all the information in the record, asked many, many questions, some answered, some not. Documents requested from the applicant in support of the appeal were not made available to the Board. We have reviewed the transcripts, letters of communications between the parties; we have reviewed all the information presented to us, so after much thought and deliberation, I would like to make the following motion: to uphold the Planning Board's decision of August 16, 2007; based upon reviewing and evaluating thoroughly all the documentation presented to us, which constitute the record of the proceedings. As required by this Board in the Standards of Review, section 10- 6 Land Development and Subdivision regulations, Town of North Smithfield, Rhode Island, we find no prejudicial procedural error, no clear error, or no lack of support by weight of the evidence of the record." The motion was seconded by Mr. Naylor. Zoning Board vote was as follows: AYE: Mr. DiNunzio, Mr. Kearns, Mr. Juhr, Mr. Naylor, Mr. Marcantonio. Motion passed, with a vote of 5-0.

Mr. Juhr made a motion for a 5 minute recess at 7:35 pm, seconded by Mr. DiNunzio.

III. Workshop Session

The Chair called the workshop session to order at 7:42 pm. Mr. Ruggiero was replaced with Assistant Town Solicitor Bob Rossi for

the remainder of the meeting.

a. Zoning Discussion—New Use Tables

The Chair stated that the town is revising the use districts in town, but the changes are currently being reviewed by consultants. Once the consultants make their recommendations, the Zoning Board and Mr. Benoit will review them, then send their comments to the Ordinance Review Committee.

b. Zoning Fees; including tie in with Land Development and Subdivision Regulations.

The Board continued their discussion of amendments to the Zoning Fee Schedule. They discussed minor word changes in the document, in order to make all fees and procedures clear. They discussed towers and vertical structures and whether or not to give specific examples of such structures.

They also discussed the paragraph at the end of the fee schedule concerning hearings "in excess of one meeting," and whether or not that was fair to an applicant who may be scheduled at the end of a meeting. Mr. Benoit stated that if the applicant doesn't complete their presentation they are responsible for additional expenses, but if the Board continues the hearing, the applicant is not responsible. Mr. DiNunzio suggested change the word "shall" to "may" and deleting the word fees.

At the beginning of the document, the Board changed the fee for “Any Application for more than one of the above” from \$350 to "add \$100 to the fees below.”

The Board also took out fees for in-law apartments, because Mr. Benoit pointed out that North Smithfield does not require a special use permit for this type of structure.

Mr. Benoit made note of all Board’s amendments to the fee schedule and will distribute corrected copies to Board members.

Mr. DiNunzio made a motion to approve the fee schedule as amended and to have Mr. Rossi pursue having the fee schedule presented to the Town Council for their approval. Mr. Kearns seconded the motion.

Zoning Board vote was as follows: AYE: Mr. DiNunzio, Mr. Kearns, Mr. Juhr, Mr. Denizard, Mr. Marcantonio. Motion passed with a vote of 5-0.

Mr. Kearns made a motion to adjourn at 8:25 pm, seconded by Mr. DiNunzio, with all in favor.